85-1452

CASE NUMBER:

Supreme Court, U.S.
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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

JOHN LAUVE

V.

SECRETARY OF STATE & ATTORNEY GENERAL

ON APPEAL FROM
THE SUPREME COURT OF MICHIGAN

JOHN LAUVE
622 Sunningdale
Grosse Pointe Woods, MI
48236
313 554-7623
pro se

February 27, 1986

## QUESTIONS PRESENTED

1. Whether Michigan Courts denied "due process" and "equal protection" guarantees in the 14th Amendment of the Federal Constitution to citizens seeking to recall government officials.

2. Whether Michigan Courts can ignore their constitution and rules, not give reasons, and refuse to fully and speedily review a controversial case on its merits.

3. When time is a factor in the protection of an election right, whether the Court can act to protect the rights in question before the petitions become worthless.

4. When deciding on court access, whether the legal form of the complaint is more important than the issues raised in the complaint.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

| | |
|---|---|
| #1 RECALL BLANCHARD COMMITTEE | #2 RECALL BLANCHARD COMMITTEE |
| | JOHN LAUVE and PRISCILLA LAMITA |
| v. | v. |
| SECRETARY OF STATE | ATTORNEY GENERAL |

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

John Lauve "pro se" hereby appeals the judgment of the Michigan Supreme Court in these cases.

John Lauve is also the Recall Blanchard Committee.

## CITATION OF OPINION

1. Recall Blanchard Committee v. Secretary of State, (No. 76866, & 77500) Michigan Supreme Court, filed December 4, 1985 & Jan. 29, 1986 Appendix F 27a-28a
   Appendix I 35a-36a
2. Recall Blanchard Committee, John Lauve and Priscilla Lamita v. Attorney General, (No. 77290, Michigan Supreme Court, filed December 4, 1985.
   Appendix H 33a-34a

## JURISDICTION

The denials of leave to appeal by the Michigan Supreme Court were entered December 4, 1985 and Jan. 29, 1986. The jurisdiction of this court is invoked under 28 U.S.C. §1257(2).

## CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment to the United States Constitution.

## INTRODUCTION

This case is an election matter. Michigan is one of 12 States that guarantees the right to petition for a special recall election. A successful recall election vacates that public office. The lawmakers have established a double standard for petitions for ballot access. They made the people's Recall petition procedure more difficult than their nomination petition procedures. Michigan courts have refused to fully and completely review the issues involved.

## STATEMENT OF THE CASE

In March 1983, 3 months after Governor Blanchard took office, he signed a record 38% income tax increase into law. In 1913 the people added 3 self government rights to their Michigan constitution. One is the right to recall elected officials (except judges) from office. This was strengthened in 1963.

> "Laws shall be enacted to provide for the recall of all elected officers except judges of the courts of record upon petition of electors equal in number to 25% of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled . The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question."

Art. 2 Sec. 8 Michigan Constitution.

In April 1983, a recall petition drive was started and over ½ million signatures were collected. The drive was inhibited by a series of laws passed by officials of the state that made their recall more difficult than the constitution or previous court decisions required. One encumbrance added in 1967 said that any signature more than 90 days old was worthless. This encumbrance was also enacted in violation of the quick change rule Art. IV Sec. 24 in the Michigan Constitution. The very lawmakers under recall, passed burdens to protect themselves from recall by the people. This complex maze of laws was designed to disenfranchise the citizen's right to recall lawmakers.

The court is asserting that the laws can not receive judicial review until they are overcome.

Two cases were filed in state court to seek a full judicial review.

CASE # 1

Recall Blanchard v Sec of State

sought a declaratory judgement on the merits of our complaints. The Federal Constitutional question was raised in page 2 1st Ammended complaint and page 47 & 48 of the brief. Those questions were never answered. The case was dismissed by Oakland County Circuit Judge Templin claiming that there was no actual controversy. (Appendix A). The court would not hear the case until the barriers were overcome and the petitions filed. "I tried to tell

you that the first time and that's what it's all about. Until you get 760,000 valid signatures you're not in court, not in this court." Judge Templin (Transcript April 18, 1985 P. 51). In other words, any burden was acceptable and would escape review if it accomplished its purpose of making a recall impossible. It is like giving a marathon runner a pack of rocks to carry on his back. He must carry them to the end of the race. If he can finish, the court will evaluate whether he really had to carry them at all. This was affirmed by the court of appeals, (Appendix C & E) again without answering the Federal question raised again on p. 10 & 11 of our motion for peremptory reversal. The

Michigan Supreme Court denied peremptory reversal (Appendix D) and reconsideration (Appendix F) without giving the required reasons. The American Civil Liberties Union filed an amicus curiae motion on the other part of this case and it too was denied by the State Supreme Court. (Appendix I)

CASE # 2

Recall Blanchard, Lauve, & Lamita v. Attorney General,

sought a mandamus action where recall petitions had been filed but they were disallowed for the same reasons complained about in case #1. The recall election was never scheduled. A court review of the Federal Constitutional issues raised in this

complaint (P. 3 & 4) and brief (p. 47 & 48) were never answered (Appendix G). The State Appeals Court failed to address most of the issues raised, dropped the committee's name from the case, ignored prior court citations and decided the "merits" by citing the defendant's opinion. The denial was an order which is not even considered a judgement by Michigan courts. This order still ended the case without a review. The Michigan Supreme Court refused to hear the case and failed to give an explanation that is required by Michigan Constitution[1](Appendix H).

The judges have accomplished the goal of delaying this controversial issue until the Governor's term of office is over; thereby denying the



1) Article VI Section 6 ref pg 25,26 following

people of the state of justice, guaranteed by our constitution.

## REASONS FOR GRANTING THE APPEAL

The Court should grant this appeal to enforce the basic principle of fairness inherent in the "due process" and "equal protection" guarantees of the U.S. Constitution, and embodied in the law books characterized by Boddie v. Connecticut, 401 U.S. 371 (1979) and Nibbia v. New York 291 U.S. 502 (1933).

What has happened in our two cases is that the most basic principle of access to the courts for a full hearing on the merits of our

complaints has been denied. The "due process" means that even unorganized citizens are entitled to having everyone of their complaints fairly and fully heard by the courts where a sufficient case or controversy exists. Instead, the people have been denied their right of petition and this case has been swept under the carpet to delay and deny a decision until the people being recalled complete their term of office. Because the issue involves the Governor, who appoints judges, the state courts are subject to political cronyism or pressure, more so because these judges are also re-elected officials.

CASE #1

Recall people have been denied the "equal protection" afforded to all other groups as demonstrated by Case #1 where we have been denied a hearing on the merits because we have not mooted our case by by filing 760,002 petition signatures. Standing was denied inspite of citations by the Court of Appeals decision (Appendix E) where all the plaintiff's were allowed standing. Only recallers have been denied standing. The law was distorted to deny "due process".

In Betts v. Brady, 316 U.S. 455 (1941) the court stressed the need to evaluate circumstances to decide if the denial of fundamental fairness is shocking to the universal sense of fairness. Failure of the trial court

to allow a hearing on the merits of any of the complaints is denial of due process.

The result is that challengers meeting the provision's formal requirements cannot challenge the provision's constitutionality because their cases are supposedly moot. Yet, challengers failing to meet the provision's formal requirements cannot challenge either, because their cases are supposedly unripe. Therefore, this Court's review is imperative and worthwhile.

The committee's interest in this action's outcome is direct and substantial. Sierra Club v. Morton, 405 US 727, 731-732; (1972).

Since the State has shown its intent to enforce the 90-day freshness provision (see Defendant's Brief in Opposition to Plaintiff's Motion for Summary judgment, pp 24-26), the context is adversarial. Appellant aims to nullify the provision. Appellee aims to retain it.

The Michigan Court's claim has no basis in law. Whether appellants have or have not submitted enough signatures within the required time frame relates more to ripeness and mootness than to standing. Appellants have every incentive to pursue this case, since their campaign will stand or fall on the outcome. Appellants have collected signatures, the outcome will determine whether they will

achieve their goal or never achieve it. Indeed, if a recall committee does not have standing to challenge the provision, who does?

The ripeness doctrine involves asking and answering whether plaintiff REQUIRES judicial relief at this time, whether he/she is justified in believing defendant will enforce a law or regulation against him/her rights. Like standing, the ripeness doctrine also involves asking whether the record shows concrete facts and defined issues. If so, the case is ripe for judicial decision. United Public Workers v. Mitchell, 340 US 75, 89-91 (1947). The Court must also consider the hardships to the parties of withholding judicial resolution.

Abbott Laboratories v. Gardner, 387 US 136, 148-149 (1967).

The ripeness doctrine's rationale is to prevent the courts from entangling themselves in abstract disagreements through avoidance of premature decisions and to protect government agencies from judicial interference until after their formalized decisions and until after challenging parties have felt their impact. Id.

The 90-day freshness requirement's self-execution has ripened this case. By voiding signatures over 90 days old, the statute has invaded the Committee's right to include all valid signatures in its total. These invalidations are

a concrete fact. The Committee has felt the provision's impact. Whether the invalidations are constitutional is a defined issue.

To withhold judicial resolution is to insulate the 90-day freshness requirement from judicial review. If the case is not ripe until the Committee or any challenger submits 760,000 (or the applicable equivalent) valid signatures gathered within 90 days, then the case is not ripe until it is moot. Compelling the challenger to meet this insurmountable requirement to challenge the law is unreasonable. The Committee has felt the law's impact: The law has invalidated signatures,. Therefore, based on the requirement's

self-enforcement, the present case is ripe.

The hardships to the Committee or challenger, of collecting a tremendous number of signatures in a few months and of being unable to challenge the requirement until the case is moot, remain insurmountable and unfair. Since the requirement has empowered appellee to invalidate hundreds of thousands of valid signatures on submission, this power has made the Committee's task much harder, by making the 760,000 signature requirement impossible to achieve. The lower court's rationale and appellee's position ignore this impact. The Committee has felt the requirement's severe impact on its

recall campaign's position. The instant case is ripe.

The lower court's and appellee's position bars challengers access to the courts, unless the cases are moot. Further, under their position, only moot cases are ripe. Their positions thus contradict the rule's intent and broad access interpretation. The Committee's position by rejecting an insurmountable set of conditions furthers the rule's intent and interpretation. Therefore, the declaratory judgment rule's intent and interpretation justify holding this case ripe.

CASE #2

Involves the situation where sufficient petitions were filed. Even

here the lack of standing claim was still used reference Case #2 (Appendix G) pg. 26a. The Court rules allow a voluntary unincorporated association to sue in its name. Michigan Court rules 2.201 (C) (3). It is settled law that corporations are persons. Yet the Michigan Court dropped the committee name from the case. The court then claimed an expensive lawyer must be hired before the merits can be fully reached. The Michigan Constitution, Article I Section 13, specifically allows non lawyers to represent themselves. It is settled law that a lawyer is not a pre-requisite to court access. One of the plaintiffs, a committee member is in fact an elector in the senators

district, contrary to the court decision. Third claim was to cite the defendants opinion as a reason to deny the merits. That opinion did not address the federal issue raised in the complaint, nor does it have any precedent that offsets the numerous court decisions that we raised.

Recallers as a class cannot be granted immunity to "equal protection", Truax v. Corrigan 257 U.S. 312 (1921). The Federal Constitution forbids sophisticated as well as simple-minded modes of discrimination, Reynolds v. Sims, 377 U.S. 533 (1963).

The judicial actions are more serious than the statutes in question. The inhibitions in the 14th ammendment also apply to the judicial department,

Barrows v. Jackson, 346 U.S. 249 (1952).

> "..We are faced with a unique situation in which it is the action of the state court which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court. ...are outweighed by the need to protect the fundamental rights which would be denied...
>
> In other unique situations which have arisen in the past, broad constitutional policy has led the Court to proceed without regard to its usual rule. Barrows, at 257.

No state can abdicate its responsibilities to provide equal protection under the 14th Ammendment either ignoring them or by merely failing to discharge them, whatever the motive may be. The State action within the

purview of the "equal protection" clause can be determined only in the framework of the peculiar facts or circumstances of the case. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1960). Our case has never reached that stage and has been denied the "due process" definition given by Daniel Webster in Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819). The Michigan Courts have failed to deliver, "a law which hears before it condemns; which proceeds upon inquiry and renders judgement only after trial". These ingredients are absent from our case.

The superficial and incomplete review of our complaints makes a mockery of the system. Words have

been written down that superficially seem to address the issues, but in fact, they have avoided most of the complaint. The reasons given by the court are not legitimate rules for denying court access.

Even if this case becomes moot, it is capable of repetition, but evades review. The Court should still review the issue. Roe v. Wade, 410 US 113, 124-125; (1973) the issue of the 90-day freshness and other provisions contitutionality are capable of repetition. Another recall campaign may land in the same position easily. The provisions are almost impossible to meet and impossible to get around. The provision, moreover, evades review, because it voids signatures,

thereby reducing the number of petition signatures daily. When a case challenging the provison reaches the appellate courts, most petition signatures, due to lack of freshness, will probably be void. The appellate process takes far longer than 90 days. Therefore, judicial resolution is justified.

Finally this appeal should be granted to show the Michigan Courts that they cannot escape their responsibility to due process as required by the 14th Ammendment of the U.S. Constitution. The Michigan Supreme Court orders (Appendix . D,F, and H) even fail to abide by the Michigan Constitution which requires;

"Decisions of the supreme court,

> including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal". Article VI Section 6 Michigan State Constitution.

Any layman reading the court orders can see that this constitution requirement has not been complied with by the Michigan Court. A blatant disregard of "due process" guarantees.

Petitioners have labored long and hard attempting to petition for redress of grievances only to be denied a fair and complete hearing in their courts. This delay of justice is denial. Further, asserting an expensive lawyer is a prerequisite to justice, is incredible coming from any

court. The magnitude of the denial of rights to those seeking to hold an election is unprecedented since the blacks were denied their rights before Southern Courts.

Absolute and arbitrary power over the lives and liberty of freemen exists nowhere in a republic Illinois C.R. Co. v. Commonwealth, 305 Ky 632 cert. denied, 334 U.S. 843 (1947). The people do not want this power to exist even in the State Courts. The Magna Charta secured subjects against arbitrary action of the Crown and placed them under the protection of the law. Dent v. West Virginia, 129 U.S. 114 (1888). This appeal seeks the same security from arbitrary

action by state courts through the protection of the U.S. Constitution.

The basic issue in this case is whether the people's football team can have a fair chance to win. They don't, if the other team (state officers) sets all the rules, and the referee's (state courts) refuse to enforce the official rules (the constitution).

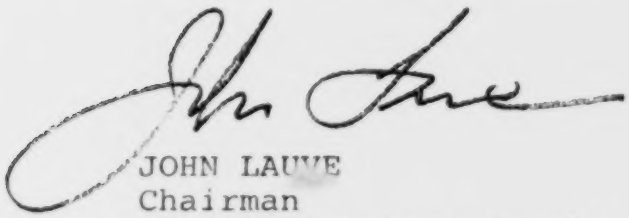
I flew helicopters in Viet Nam supporting truth, justice and the American way. These wonderful constitutional principals and legal decisions buried in dusty law books mean nothing if they can't be easily applied. The Michigan Courts believe they can avoid responsibility because

the Supreme Court is too busy to hear our appeal. We pray not.

## CONSLUSION

For any of the above reasons, this appeal to the Supreme Court of the United States should be granted.

RESPECTFULLY SUBMITTED.



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APPENDIX A

STATE OF MICHIGAN

IN THE CIRCUIT COURT

FOR THE COUNTY OF OAKLAND

RECALL BLANCHARD COMMITTEE

PLAINTIFF,

v

SECRETARY OF STATE,
RICHARD H. AUSTIN,

DEFENDANT.
_____/

NO. 83-262771-AZ
HONORABLE ROBERT L. TEMPLIN

ORDER OF ACCELERATED JUDGMENT

At a session of said Court, held in the Courthouse Tower, City of Pontiac, County of Oakland, State of Michigan, on the ____ day of 4-17-85, 1985

PRESENT: HONORABLE ROBERT L. TEMPLIN
Circuit Judge

This cause for declaratory relief having come on for hearing by Defendant's Motion for Accelerated Judgment, and the Court having considered the pleadings, briefs and arguments of counsel, the Court having rendered its opinion from the bench thereon on March 18, 1985, which opinion is expressly incorporated herein verbatim by reference, the Court having determined that Defendant's Motion for Accelerated Judgement should be granted for the reason that the Court lacks subject matter jurisdiction, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED

that Defendant's Motion for Accelerated Judgement be and is hereby granted and Plaintiff's First Ammended Complaint is dismissed without prejudice.

---

/s/ Robert L. Templin

Circuit Judge

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT

FOR THE COUNTY OF OAKLAND

RECALL BLANCHARD COMMITTEE

PLAINTIFF,

v

SECRETARY OF STATE,

RICHARD H. AUSTIN,

DEFENDANT.

_____/

NO. 83-262771-AZ

HONORABLE ROBERT L. TEMPLIN

ORDER

At a session of said Court, held in the Courthouse Tower, City of Pontiac,

County of Oakland, State of Michigan, on the ____ day of 4-17-85, 1985

PRESENT: HONORABLE ROBERT L. TEMPLIN

Circuit Judge

This cause having come on for hearing by Plaintiff's Motion for Reconsideration, and the Court having considered the pleadings and arguments of counsel, the Court having rendered its opinion from the bench thereon on April 18, 1985, which opinion is expressly incorporated herein verbatim by reference, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Motion for Reconsideration is hereby denied.

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/s/ Robert L. Templin

Circuit Judge

APPENDIX C

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN,

Held at the Court of Appeals in the City of Detroit, on the Twenty-First day of June, in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

WILLIAM R. BEASLEY

Presiding Judge

S. JEROME BRONSON

WALTER P. CYNAR

Judges

RECALL BLANCHARD COMMITTEE,

Plaintiff-Appellant,

-v-

SECRETARY OF STATE,

Defendant-Appellee.

_____/

No. 84657

L.C. #83-262771 AZ

In this case, a claim of appeal, a motion of peremptory reversal and a motion for immediate consideration have been filed by plaintiff-appellant, and an answer and brief in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same hereby is GRANTED.

IT IS FURTHER ORDERED that the motion for peremptory reversal be, and the same hereby is DENIED for failure to persuade the Court of the existence of

manifestly reversible error warranting peremptory relief.

STATE OF MICHIGAN--ss.

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/s/ Ronald L. Dzierbicki

Chief Clerk

APPENDIX D

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of August in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

G. MENNEN WILLIAMS,

Chief Justice

CHARLES L. LEVIN,

JAMES L. RYAN,

JAMES H. BRICKLEY,

MICHAEL F. CAVANAGH,

PATRICIA J. BOYLE,

DORTHY COMSTOCK RILEY,

Associate Justices

RECALL BLANCHARD COMMITTEE,

Plaintiff-Appellant,

v

SECRETARY OF STATE,

Defendant-Appellee.

---

SC: 76866 COA: 84657 LC: 83-262771 AZ

On order of the Court, the motion to expedite is considered, and it is GRANTED. The application for leave to appeal is also considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

STATE OF MICHIGAN--ss.

---

/s/ CORBIN R. DAVIS,

Clerk of the Supreme Court

APPENDIX E

STATE OF MICHIGAN

COURT OF APPEALS

RECALL BLANCHARD COMMITTEE,

Plaintiff-Appellant,

-v-

SECRETARY OF STATE,

Defendant-Appellee.

_____/

BEFORE: Mackenzie, P.J., and Cynar and H.E. Deming*, JJ. H.E. DEMING, J.

On April 18, 1985 Oakland County Circuit Court Judge Robert L. Templin entered an order granting defendant Secretary of State's motion for accelerated judgment on the ground that the circuit court lacked subject-matter jurisdiction over



*Circuit judge, sitting on the Court of Appeals by assignment.

plaintiff Recall Blanchard Committee's complaint for declaratory relief. Plaintiff appeals by right from the grant of accelerated judgment and from the trial court's denial of plaintiff's motion for reconsideration. We affirm.

On April 18, 1983, the Oakland County Election Commission authorized the circulation of a petition by plaintiff Recall Blanchard Committee ("the committee"). The committee was seeking the recall of Governor James Blanchard because he had signed into law a 30 percent increase in the state income tax. Pursuant to MCL 168.961; MSA 6.1961, the committee was limited to a 90-day period in which to obtain the 760,002 valid signatures and

submit the signatures to defendant Secretary of State. Any signatures not obtained during the 90-day period were not to be counted by the Secretary of State in determining whether a sufficient number of signatures were presented to place the recall issue on the ballot.

On July 28, 1983, the Committee filed a complaint with the Oakland County Circuit Court seeking a declaratory judgement. The committee filed an amended complaint on December 5, 1984 which set fourth theories allegedly justifying the granting of declaratory relief. In Count I, the

Committee alleged that the 90-day "freshness" requirement of MCL 168.961; MSA 6.961 was unconstitutional. In Count II, the Committee contended that the statute was enacted in violation of the "Change of Purpose" clause of art 4, sec 24 of the Michigan Constitution. In Count III, the Committee asserted that sections 951, 952, 954, 957, 961, of the Michigan Election Law, which pertained to the recall process, were unconstitutional. Finally, in Count IV, the Committee contended that the statutory requirements imposed on recall petitions were harsher than the requirements for nominating petitions and were therefore unconstitutional as violative of equal protection.

The Secretary of State, on December 26, 1984, filed an answer to the amended complaint, generally denying the Committee's legal conclusions and asserting several affirmative defenses. On the same day, the Secretary of State also moved for accelerated judgment, pursuant to GCR 1963, 116.1(2) and (3) [MCR 2.116(C) (4), (5)], on the grounds that the trial court lacked jurisdiction over the subject matter of the amended complaint, in that an actual controversy did not exist and the Committee, as a political committee, lacked legal capacity to sue.

A hearing on the motion for accelerated judgment was conducted on

March 18, 1985. Following oral argument, Judge Templin granted the Secretary of State's motion and delivered the following opinion from the bench:

"*** [T]here's no question that as Defendant contends that there must be an actual controversy existing to give this Court jurisdiction.

"Now the Plaintiff has not denied that a minimum of seven hundred sixty thousand approximately valid signatures are required and must be submitted to the Secretary of State to place the question of recalling Governor Blanchard on the ballot. And Plaintiff admits it doesn't have the requisite number of valid signatures, but sort of asserts that sometime in

the future it may have the requisite number of signatures. But unfortunately for this Court to consider the matter, the requisite number of signatures in this Court's opinion must be filled by this time. And the issue of the Validity and Constitutionality of the other statutes being challenged by Plaintiff is irrelevant because the Plaintiff hasn't fulfilled the primary conditions of obtaining the requisite number of signatures. So as far as this Court is concerned, this Court lacks jurisdiction and I'm going to grant the motion of the Defense for accelerated judgment."

The committee subsequently filed a motion for reconsideration. The

trial court, noting that the Committee did not attack the constitutional validity of the provision which requires 760,002 signatures, denied the Committee's motion. Orders granting the Secretary of State's motion for accelerated judgment and denying the Committee's motion for reconsideration were entered on April 18, 1985.

The sole issue presented to this Court on appeal is whether there was an actual controversy so as to empower the trial court to reach the merits of the Committee's action for declaratory judgment. As authorized by art 6, sec 13 of the Michigan Constitution, MCR 2.605(A) empowers the circuit court to issue a declaratory judgment only

where a case of actual controversy exists. Where no case of actual controversy exists, the circuit court lacks subject-matter jurisdiction to enter a declaratory judgment. See Shavers v Attorney General, 402 Mich 554, 588; 267 NW2d 72 (1978).

GCR 1963, 521.1, the predecessor of MCR 2.605(A), similarly limited the circuit court's power to issue declaratory judgments to actions where there is "a case of actual controversy". Cases decided under GCR 1963, 521.1 indicate that generally a case of actual controversy does not exist where the injury sought to be prevented is merely hypothetical. Shavers, supra, 589. The declaratory judgment rule is intended to be

liberally construed to provide a broad, flexible remedy to increase access to the courts, and in some instances a declaratory judgment is appropriate even though actual injuries or losses have not yet occurred. But in such cases, an actual controversy will be found to exist only where a declaratory judgment is necessary to guide a litigant's future conduct in order to preserve the litigant's legal rights. Shavers, supra: Bane v Pontiac Twp, 343 Mich 481; 72 NW2d 134 (1955); United States Aviex Co v Travelers Ins. Co, 125 Mich App 579, 585; 336 NW2d 838 (1983); County of Delta v Dep't of Natural Resources, 118 Mich App 458, 469; 325; NW2d 455 (1982).

In the instant case, the Committee challenges the constitutionality of eight statutory provisions: (1) the 90-day limit on obtaining signatures (MCL 168.961; MSA 6.1961); (2) the prohibition on filing a petition against an elected officer prior to the officer's having been in office for six months (MCL 168.951; MSA 6.1951); (3) the requirement that proposed petitions be submitted to the Board of County Election Commissioners for determination of whether the reasons for recall are stated with sufficient clarity in the proposed petition (MCL 168.952(2); MSA 6.1952(2)); (4) the requirement that a petition be sponsored by a registered voter prior to being submitted to the

Board of County Election Commissioners (MCL 168.952(1); MSA 6.1952(1)); (5) & (6) the requirement that the petition be signed by "registered voters" and the requirement that the signatures be verified by the city or township clerk as being those of "registered voters" (MCL 168.954, 168.961; MSA 6.1954,..6.1961); (7) the requirement that a person circulating a petition be a registered voter (MCL 168.957; MSA 6.1957; and (8) the imposition of a "penalty" payment of the election expenses of the preceding special election, upon refiling a recall petition against the same officer in the same term after the holding of a special election on the original

recall petition (MCL 168.969;MSA 6.1969).

The Committee does not, however, challenge the validity of the constitutional and statutory requirement that a petition contained valid signatures equal to 25% of the number of votes cast for the gubernatorial candidates in the preceding general election. Const. 1963, art 2, sec 12; MSA 168.955; MSA 6.1955. Here, the minimum number of signatures has been acknowledged by the Committee to be 760,002.

There has been no evidence presented that the Committee has submitted, as yet, any signatures for counting or verification. Accordingly, no petition has been rejected by the

Secretary of State as being insufficient on the basis of any of the challenged statutory provisions. Therefore, any actual injury or losses has not yet occurred and are contingent on the Committee's filing of petitions with the Secretary of State.

We note that several of the Committee's challenges have become moot. Specifically, we refer to challenges (2), (3), and (4) because the Board of County Election Commissioners has already approved the Committee's proposed petition and Governor Blanchard has been in office for well over six months. We do not feel that a declaratory judgment is necessary to guide the Committee's

future conduct with regard to the rest of its statutory challenges. The Committee's future conduct with regard to the rest of its statutory challenges. The Committee's task, while perhaps not easy, is straightforward: to collect the requisite number of signatures to create a justiciable case of controversy. Until that time, we are in agreement with the trial court that the court lacks jurisdiction to hear the Committee's claims.

AFFIRMED. No costs, a public question being involved.

/s/ Barbara B. MacKenzie

/s/ Walter P. Cynar

/s/ Hudson E. Deming

APPENDIX F

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 4th day of December in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

G. MENNEN WILLIAMS,

Chief Justice

CHARLES L. LEVIN,

JAMES L. RYAN,

JAMES H. BRICKLEY,

MICHAEL F. CAVANAGH,

PATRICIA J. BOYLE,

DORTHY COMSTOCK RILEY,

Associate Justices

RECALL BLANCHARD COMMITTEE,

Plaintiff-Appellant,

v

SECRETARY OF STATE,

Defendant-Appellee.

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SC: 76866 COA: 84657 LC: 83-262771 AZ

On order of the Court, the motion for reconsideration of this Court's order of August 28, 1985 is considered, and it is DENIED because it does not appear that the order was entered erroneously.

STATE OF MICHIGAN--ss.

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/s/ CORBIN R. DAVIS

Clerk of the Supreme Court

## APPENDIX G

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the twenty-seventh day of August in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

JOHN H. SHEPHERD

Presenting Judge

S. JEROME BRONSON

WILLIAM R. BEASLEY

Judges

JOHN LAUVE and

PRISCILLA LAMITA,

Plaintiffs,

-v-

ATTORNEY GENERAL and

SECRETARY OF STATE,

Defendants.

_____/

No. 86317

In this cause a complaint for mandamus, motion for preliminary injunction, and motion for immediate consideration are filed by plaintiffs, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED; and,

IT IS FURTHER ORDERED that the complaint for mandamus be, and the same is hereby DENIED:

(1) Because plaintiffs, not residents or electors in Senator

McCollough's district, lack standing to maintain this action in their own right;

(2) Because the complaint if filed by a person who is not an attorney at law licensed to practice in this State, but is on behalf of a separate legal entity, the Recall McCollough Committee, which was proponent of this recall petition in this Court's Docket No. 76326, RJA §916; and

(3) For lack of merit in the grounds presented. 1976 OAG No. 4964, p 403.

IT IS FURTHER ORDERED that the motion for preliminary injunction be, and the same is hereby DENIED.

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/s/ RONALD L. DZIERBICKI,

Clerk of the Court of Appeals

APPENDIX H

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 4th day of December in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable

G. MENNEN WILLIAMS,

Chief Justice

CHARLES L. LEVIN,

JAMES L. RYAN,

JAMES H. BRICKLEY,

MICHAEL F. CAVANAGH,

PATRICIA J. BOYLE,

DORTHY COMSTOCK RILEY,

Associate Justices

JOHN LAUVE and PRISCILLA LAMITA,

Plaintiff-Appellant,

v

ATTORNEY GENERAL and SECRETARY OF STATE,

Defendant-Appellee.

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SC: 77290 COA: 86317

On order of the Court, the motion to expedite is GRANTED. The application in propria persona for leave to appeal is also considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN-ss

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/s/ CORBIN R. DAVIS Clerk of the Supreme Court

APPENDIX I

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 29th day of January in the year of our Lord one thousand nine hundred and eighty-six.

Present the Honorable
G. MENNEN WILLIAMS,
Chief Justice

CHARLES L. LEVIN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
DOROTHY COMSTOCK RILEY,
DENNIS W. ARCHER,
Associate Justices

SC: 77500
COA: 84657
LC: 83-161771-AZ

RECALL BLANCHARD COMMITTEE

Plaintiff-Appellant,

v

SECRETARY OF STATE,

Defendant-Appellee.

/

On order of the Court, the motion in propria persona to expedite leave to appeal is considered, and it is GRANTED. The motion by the American Civil Liberties Union Fund of Michigan to appear as amicus curiae is GRANTED.

The application in propria persona for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN-ss.

/s/ CORBIN R. DAVIS,
Clerk of the Supreme Court

APPENDIX J

NOTICE OF APPEAL

THE RECALL BLANCHARD COMMITTEE APPEALS THE JUDGMENTS OF THE MICHIGAN SUPREME COURT ON December 4th, 1985 & January 29, 1986 in these cases.

CASE #1 - SC: 76866 & SC 77500

CASE #2 - SC: 77290

Under 28 U.S.C. § 1257(2).

Also per rule 13.1 Supreme Court of the U.S. please certify the entire record of these cases and provide for it's transmission to:

Clerk
Supreme Court of the United States
1 1st Street N.E.
Washington D.C. 20543.

Enclosed are the copies of our brief as noted below.

AFFIDAVIT OF SERVICE

I hereby certify, Per rule 28.5 Supreme Court of the U.S. all parties required to be served have been served by first class mail on the below date to the following addresses:

1 copy: Supreme Court Clerk,
P.O. Box 30052
Lansing, MI 48909

3 copies:

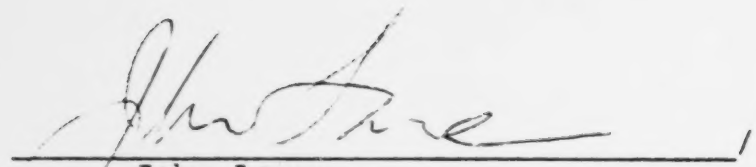
Richard Gartner
Assistant Attorney General
600 Law Building
525 West Ottawa St.
Lansing, MI 48913

3 copies:

Robert H. Mourning
Attorney General
600 Law Building
525 West Ottawa St.
Lansing, MI 48913

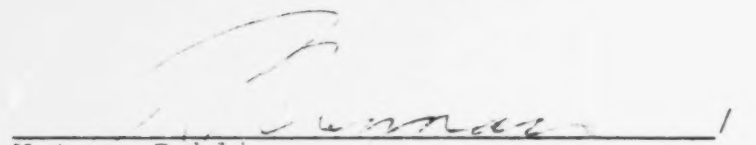
3 copies:

Howard Yale Lederman
American Civil Liberties Union
Fund of Michigan
1553 Woodward Ave., Ste. 1701
Detroit, MI 48226



John Lauve
Chairman
Recall Blanchard Committee
622 Sunningdale
Grosse Pointe Woods, MI 48236
313-554-7623

Subscribed and sworn to before me
on this 2/27 1986.



Notary Public